In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 388

BANKLINE OIL COMPANY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The question presented is whether the income which petitioner realized as assignee of an oil and gas lease granted by the State of California is immune from the Federal income tax. The court below held that the doctrine of immunity did not apply. We believe that the decision is correct and in harmony with the trend of decisions. However, we think it our duty to call the Court's attention to the decision of the Circuit Court of Appeals for the Tenth Circuit in *Mountain Producers Corp.* v. *Commissioner*, announced on August 26, 1937, not

yet reported, but may be found in 1937 Prentice-Hall, vol. 1, par. 1559. While that case is not referred to in the petition, it is apparently in conflict with the decision below. In the *Mountain Producers* case the lessee of state school lands had made a declaration of trust in which it undertook to hold an undivided 50 per cent interest in the oil lease for the benefit of a subsidiary of the taxpayer. The Circuit Court of Appeals for the Tenth Circuit, Judge Phillips dissenting, held the income exempt from taxation by the United States.

The situation, in short, is that the Circuit Court of Appeals for the Tenth Circuit has followed *Gillespie* v. *Oklahoma,* 257 U. S. 501 and *Burnet* v. *Coronado Oil & Gas Co.,* 285 U. S. 393, while the court below has followed *Burnet* v. *A. T. Jergins Trust,* 288 U. S. 508. We believe the resulting decisions are in substantial conflict,[1] and that an important field of the intergovernmental tax immunity doctrine is in need of clarification. It is probable that the decision in this case can be reconciled with the *Mountain Producers* case on the ground suggested in the *A. T. Jergins* case, where the Court distinguished the *Gillespie* and *Coronado* cases on the ground that the government lands were in those cases held pursuant to an express trust (p. 516). In the present case, the lands are tide lands

[1] We also believe that the *Mountain Producers* case should, in any event, have been decided for the Government because the taxpayer's subsidiary was not the lessee of the state lands, and had direct contractual relations only with the private lessee of the lands.

owned by the State of California in its sovereign capacity and its trusteeship is implied rather than expressed. In the *Mountain Producers* case the State of Wyoming leased lands granted by the United States to the State for the maintenance of its schools. It is possible that the title of the State of Wyoming may be more akin to that of an express trustee than is that of the State of California in the present case. But we do not believe that this distinction can properly be given controlling weight; the doctrine of intergovernmental tax immunity is designed to protect governmental functions whether the Government acts as such or as a trustee. We agree with petitioner (Br. 16) that it should make no difference whether the proceeds of the oil leases are paid directly into a school fund or are paid first into the general fund and then used for the maintenance of the public schools.

Because of the apparent conflict, and the fact that respondent has filed a petition for certiorari seeking a review of the decision below on another issue (*Guy T. Helvering, Commissioner of Internal Revenue* v. *Bankline Oil Company,* No. 387, October Term, 1937), respondent does not oppose the issuance of a writ of certiorari.

Respectfully submitted.

STANLEY REED,
Solicitor General.

OCTOBER 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937